IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 187 OF 2005

SHRI LAWRENCE COSTA ....Petitioner

Versus

MRS.MARIA A.FERNANDES ....Respondent

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the petitioner.

Coram:- R. M. LODHA, J.

Date:- 14th October, 2005

P.C.

Heard Mr. M. B. D'Costa, the learned Senior Counsel for the petitioner.

It is true that the present petitioner who filed the matrimonial suit for divorce withdrew the said suit in terms of the order passed by Patriarchal Tribunal of Archdiocese of Goa since the marriage between the parties was declared annulled. In the suit for divorce filed by the present petitioner, the respondent had filed counter claim seeking maintenance. The application was made by the present petitioner for dismissing the counter claim. The said application has been dismissed by the Court below by the impugned order.

The contention of the learned Senior Counsel for the petitioner is that on the marriage having been annulled, the counter claim of maintenance made by the wife in the suit could not survive and was liable to be dismissed. The contention does not seem to be wholly right. The respondent may not be entitled to any maintenance from the date the marriage was declared annulled, but so long as the marriage subsisted

until the declaration of annulment, the claim of maintenance made by the wife in counter claim is not liable to be rejected because the petitioner withdrew the suit for divorce. The claim of maintenance at least until the declaration of annulment shall have to be examined on merits on the basis of the evidence that may be led by the parties before the trial Court.

No interference is called for in the impugned order.

Writ petition is dismissed.

Writ petition is dismissed in limine.

R. M. LODHA, J.

ssm.